

SECOND REGULAR SESSION

SENATE BILL NO. 967

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GREEN.

Read 1st time January 30, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4198S.011

AN ACT

To repeal section 290.500, RSMo, and to enact in lieu thereof one new section relating to overtime exemptions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 290.500, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 290.500, to read as follows:

290.500. As used in sections 290.500 to 290.530, the following words and
2 phrases mean:

3 (1) "Agriculture", farming and all its branches including, but not limited
4 to, the cultivation and tillage of the soil, dairying, the production, cultivation,
5 growing and harvesting of any agricultural commodities, the raising of livestock,
6 fish and other marine life, bees, fur-bearing animals or poultry and any practices
7 performed by a farmer or on a farm as an incident to or in conjunction with
8 farming operations, including preparation for market, delivery to storage or to
9 market or to carriers for transportation to market;

10 (2) "Director", the director of the department of labor and industrial
11 relations or his authorized representative;

12 (3) "Employee", an individual employed by an employer, except that the
13 term "employee" shall not include:

14 (a) Any individual [employed] **who is compensated on a salary or fee**
15 **basis of at least five hundred and twenty-five dollars a week for his or**
16 **her employment as a computer system analyst, computer programmer,**
17 **software engineer, or other similarly skilled worker in the computer**
18 **field or in a bona fide executive, administrative, or professional capacity;**

19 (b) Any individual engaged in the activities of an educational, charitable,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 religious, or nonprofit organization where the employer-employee relationship
21 does not, in fact, exist or where the services rendered to the organization are on
22 a voluntary basis;

23 (c) Any individual standing in loco parentis to foster children in their care;

24 (d) [Any individual who receives a minimum wage pursuant to the Fair
25 Labor Standards Act of 1938, as amended, including individuals employed by an
26 employer covered by 29 U.S.C. 203, or other applicable federal law;

27 (e) Any individual employed for less than four months in any year in a
28 resident or day camp for children or youth, or any individual employed by an
29 educational conference center operated by an educational, charitable or
30 not-for-profit organization;

31 [(f)] (e) Any individual engaged in the activities of an educational
32 organization where employment by the organization is in lieu of the requirement
33 that the individual pay the cost of tuition, housing or other educational fees of the
34 organization or where earnings of the individual employed by the organization are
35 credited toward the payment of the cost of tuition, housing or other educational
36 fees of the organization;

37 [(g)] (f) Any individual employed on or about a private residence on an
38 occasional basis for six hours or less on each occasion;

39 [(h)] (g) Any handicapped person employed in a sheltered workshop,
40 certified by the department of elementary and secondary education;

41 [(i)] (h) Any person employed on a casual basis in domestic service
42 employment to provide baby-sitting services, any person employed in the domestic
43 service of any family or person at his home, and any employee employed in
44 domestic service employment to provide companionship services for individuals
45 who because of age or infirmity are unable to care for themselves;

46 [(j)] (i) Any individual employed by an employer subject to the provisions
47 of Part I of the Interstate Commerce Act;

48 [(k)] (j) Any individual employed on a casual or intermittent basis as a
49 golf caddy, newsboy, or in a similar occupation;

50 [(l)] (k) Any individual whose earnings are derived in whole or in part
51 from sales commissions and whose hours and places of employment are not
52 substantially controlled by the employer;

53 [(m)] Any individual subject to the minimum wage provisions of applicable
54 federal law or] (l) Any individual who is employed in any government position
55 defined in 29 U.S.C. [203(2)(c)(i)] **203e(2)(c)(i)** and (ii);

56 [(n)] (m) Any individual employed by a retail or service business whose

57 annual gross volume sales made or business done is less than five hundred
58 thousand dollars;

59 [(o)] (n) Any individual who is an offender, as defined in section 217.010,
60 RSMo, who is incarcerated in any correctional facility operated by the department
61 of corrections, including offenders who provide labor or services on the grounds
62 of such correctional facility pursuant to section 217.550, RSMo;

63 [(p)] (o) Any individual described by the provisions of section 29 U.S.C.
64 213(a)(8);

65 (4) "Employer", any individual, partnership, association, corporation,
66 business, business trust, or any person or group of persons acting directly or
67 indirectly in the interest of an employer in relation to an employee;

68 (5) "Learner and apprentice", any individual who has not completed the
69 required training for a particular job. In no event shall the individual be deemed
70 a learner or apprentice in the occupation after three months of training except
71 where the director finds, after investigation, that for the particular occupation a
72 minimum of proficiency cannot be acquired in three months. In no case shall a
73 person be declared to be a learner or apprentice after six months of training for
74 a particular employer or job. Employees of an amusement or recreation business
75 that meets the criteria set out in 29 U.S.C. 213(a)(3) may be deemed a learner or
76 apprentice for ninety working days. No individual shall be deemed a learner or
77 apprentice solely for the purpose of evading the provisions of sections 290.500 to
78 290.530;

79 (6) "Occupation", any occupation, service, trade, business, industry, or
80 branch or group of industries or employment or class of employment in which
81 individuals are gainfully employed;

82 (7) "Wage", compensation due to an employee by reason of his
83 employment, payable in legal tender of the United States or checks on banks
84 convertible into cash on demand at full face value.

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